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To: Examiner Michael Young Won (2155) From: Robert C. Kowert

Fax: 571-273-8300 Pages: 6 **(including cover sheet)**

Phone: Date: April 27, 2006

Re: U.S. S/N 10/045,682 (Petition) Phone: 512-853-8800

Attached please find a formal submission of a Petition under 37 C.F.R. 1.144 for U.S. Serial No. 10/045,682.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/045,682
Filed: October 29, 2001
Inventors:
Robert Byrne
Prasanta Behera

Title: Macro-Based Access Control

§ Examiner: Won, Michael Young
§ Group/Art Unit: 2155
§ Atty. Dkt. No: 5681-06200

**** CERTIFICATE OF FACSIMILE **** TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to the U.S. Patent and Trademark Office at (571) 273-8300 on the date shown below:

Robert C. Kowert
Name of Registered Representative

Signature

April 27, 2006
Date

PETITION UNDER 37 CFR 1.144

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This paper is submitted as a petition under 37 CFR 1.144 from the restriction requirement made in the Final Office Action dated January 17, 2006.

In the Final Office Action dated January 17, 2006, the Examiner presented a restriction requirement requiring election of one of the following two inventions as defined by the Examiner:

I. Claims 1-44, are drawn to Distributed or remote access, classified in class 707, subclass 10.
II. Claims 45-88, drawn to Network resource access controlling, classified in class 709, subclass 229.

The Examiner further stated that since Applicant "has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution of claims 1-44 on the merits. Accordingly, the Examiner considered Invention I to be elected and withdrew claims 45-88.

Applicants, in the Response to Final Action dated February 20, 2006, traversed the restriction requirement on the grounds that the Examiner has failed to state a proper requirement for restriction. The Examiner made the requirement final in the Advisory Action of March 23, 2006.

Applicants petition for withdrawal of the restriction requirement. According to M.P.E.P. § 808:

> Every requirement to restrict has two aspects: (A) the reasons (as distinguished from the mere statement of conclusion) why each invention *as claimed* is either independent or distinct from the other(s); and (B) the reasons why there would be a serious burden on the examiner if restriction is not required, i.e., the reasons for insisting upon restriction therebetween as set forth in the following sections. (underline emphasis added).

The Examiner has completely failed to even attempt to satisfy either of the requirements of M.P.E.P. § 808. Instead, the Examiner has done nothing more that make a "mere statement of conclusion" that restriction should be required. The Examiner has provided no reasons whatsoever as to why each invention as claimed is either independent or distinct from the other. Nor has the Examiner provided any reasons whatsoever as to why there would be a serious burden on the examiner if restriction were not required. It is the Examiner who has the burden to state a proper restriction requirement. Applicants also note that both claim 1 and claim 45 pertain to operation for a "directory server."

In the Advisory Action the Examiner contends that claims 1-44 (Invention I) "involve the steps of accessing node/subnode via a directory server" and that claims 45-88 (Invention II) "involves (sic) the steps of 'controlling' the access of network resources." However pointing out a difference in wording between the claims of Invention I and the claims of Invention II does not establish the claims recite independent or distinct inventions as defined in the M.P.E.P. § 806 – § 806.06. Clearly, none of the claims are directed to independent inventions as defined in 806.06. Nor are the claims directed to separate and mutually exclusive species as defined by M.P.E.P. § 806.04. Nor has the Examiner shown that any of the claims are directed to related and distinct

inventions as defined by M.P.E.P. § 806.05. The Examiner clearly has not established proper grounds for restriction.

Furthermore, in regard to the second requirement of M.P.E.P. § 808, if the Examiner's intention was to rely upon separate classifications to establish a serious burden, such reliance would be misplaced since the stated classifications are not separate or accurate. For example, the Examiner states that Invention I is classified as class 707, subclass 10 and that Invention II is classified as class 709, subclass 229. However, these classifications could both be applied to all of the claims. According to the Manual of Classification, the definition of class 707, subclass 10 is "management of distributed database data and file access and retrieval, and retrieval of database data and files from a centralized or remote site." The definition for class 709, subclass 229 is for "means or steps for controlling or limiting access by computers on a network to resources on the network." However, as would be readily apparent to anyone of ordinary skill in the art upon reading Applicants' disclosure, embodiments of both claims 1-44 and claims 45-88 can apply to both database/file access and access control to network resources. Therefore, the Examiner has not shown classifications that are different for the different claim groups. Note that both claim 1 and claim 45 recite operation for a "directory server." Since the purported classifications actually relate to all of the claims, the Examiner cannot rely upon these classifications to establish "a serious burden on the examiner if restriction is not required." *See* M.P.E.P. § 808.

In the Advisory Action, the Examiner responds to the argument above, asserting, "[a]mong the claims involving different steps performing different functions, the primary reasoning between the class distinction results from claim 1, wherein the access is not controlled" and "[t]here is nowhere in claim 1 that recites a limitation to refuse an access." The Examiner further asserts, "[c]laim 45, clearly sets limitations wherein a requestor in order to gain access must meet the conditions set forth or is denied access." However, as noted above, merely pointing out a difference in wording between the respective claims of the two identified inventions does not change the fact that the

classifications stated by the Examiner actually relate to all the claims. Nor does a mere difference in scope establish a "serious burden."

In summary, since the Examiner has failed to meet both of the requirements of M.P.E.P. § 808 to establish a proper restriction requirement, the Examiner has not established all of the necessary elements of a *prima facie* restriction requirement. Therefore, the Examiner's restriction requirement must be withdrawn. Examination of pending claims 45-88 is respectfully requested.

CONCLUSION

In light of the above remarks, Applicants request that the restriction requirement be withdrawn.

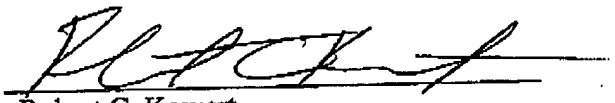
If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above referenced application from becoming abandoned, Applicants hereby petition for such extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert & Goetzel PC Deposit Account No. 501505/5681-06200/RCK.

Also enclosed herewith are the following items:

☐ Return Receipt Postcard

☐ Other:

Respectfully submitted,



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Date: April 27, 2006